

## **REMARKS**

Claims 1 through 15 have been cancelled. New claims 16 through 25 have been added. Claims 16 through 22 are pending in the present application. To provoke an interference, claims 16 through 22 correspond, respectively, to claims 1, 3 through 6, 11 and 12, of U.S. Patent No. 6,290,728 (the '728 Patent). Applicants respectfully request that an interference be declared between the present application, as amended, and the '728 patent.

The present application and the '728 patent both claim the same invention. The present applications and the '728 patent both describe conduits for placement within a heart wall between a heart chamber and a coronary artery. The conduits include attachment mechanisms to anchor the conduit in place within the heart wall. Both the present application and the '728 patent use the same terms to describe the conduit. The claims of the present application are neither more broad nor more narrow than the claims of the '728 patent. The inventors of the parent applications from which the present application depends are also the inventors of the present application.

### **A. Priority Information for the Present Application**

The present application is a continuation of U.S. patent application Serial No. 09/326,819, filed June 7, 1999, which is a divisional of U.S. patent application Serial No. 08/882,397, filed June 25, 1997 (now U.S. Patent 5,944,019), which is a continuation-in-part of U.S. patent application Serial No. 08/689,773, filed August 13, 1996 (now U.S. Patent 5,755,682).

All of the claims pending in the present application, as amended, are fully supported by the Specification filed August 13, 1996, and are therefore entitled to an effective filing date of August 13, 1996. This is prior to the earliest priority date claimed by the '728 patent. As the present application has an earlier effective filing date than the earliest priority date claimed by the '728 patent, Applicants have a clear basis for priority over the '728 patent.

### **B. Compliance with 37 C.F.R. §1.607(a)**

The information required by 37 C.F.R. §1.607(a) is set forth below under headings which correspond to the subsections of §1.607 to facilitate consideration by the Examiner.

I. Identification of the Patent:

The patent which claims subject matter which interferes with the subject matter claimed in the present application is U.S. Patent No. 6,290,728 (the '728 patent), issued on September 18, 2001, and filed on August 4, 1999. The '728 patent was issued to Phelps, et al, assigned to Percardia, Inc., and is entitled "Designs for Left Ventricular Conduit." The '728 patent claims priority filing dates of September 10, 1998, based on provisional application No. 60/099,767, and October 15, 1998, based on provisional application No. 60/104,397.

II. Presentation of Proposed Count:

The proposed count 1 is as follows:

1. A bypass conduit for use in a wall of a heart, comprising:  
a hollow conduit having an interior and an exterior and adapted to be positioned in the heart wall between the coronary artery and a chamber in the heart, wherein the conduit has an attachment mechanism on at least one end adapted to anchor the conduit in place.

The proposed count 1 is at least as broad as claim 1 of the '728 patent.

III. Identification of the Claim within the '728 Patent which corresponds to the Proposed Count 1:

The proposed count is identical to claim 1 of the '728 patent and claim 1 is presented as the broadest claim within the '728 patent.

IV. Identification of the Claim within the Present Application which corresponds to the Proposed Count 1:

Claim 16 of the present application is identical to proposed count 1 and claim 16 is presented as the broadest claim of the present application.

V. Support for Pending Claims within the Present Application:

Support in Specification of the present application for claim 16, as well as for the other copied claims, can be found in Table I, attached hereto. Also shown in Table I are the supporting references for the claims of the present application within U.S. Patent No. 5,755,682, which issued from U.S. patent application Serial No. 08/689,773, filed August 13, 1996.

VI. 35 U.S.C. §135(b) is Satisfied:

The '728 patent issued on September 18, 2001. The claims of the present application, as amended, have been filed within one year of the issuance of the '728 patent.

Applicants respectfully request that an interference be declared based on the proposed count, set forth above, with claim 1 of the '728 patent and claim 16 of the present application. If the Examiner requires additional information or feels that a telephone interview would assist the examination of the present application, please contact Alan Stewart at 612.371.5376.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Date:

Oct. 9, 2003

Alan R. Stewart

Alan R. Stewart  
Reg. No. 47,974  
ARS:PSTkaw

**23552**

PATENT TRADEMARK OFFICE

Table I: Support for Pending Claims within the Present Application and U.S. Patent 5,755,682

Pending Claims Claim No. Claim	Supporting Reference Within Present Application	Supporting Reference in U.S. Patent 5,755,682
16 A bypass conduit for use in a wall of a heart, comprising: a hollow conduit having an interior and an exterior; and adapted to be positioned in the heart wall between the coronary artery and a chamber in the heart, wherein the conduit has an attachment mechanism on at least one end adapted to anchor the conduit in place.	FIGS. 3A, 8 Page 30, line 1 to page 31, line 6 Page 48, line 25 to page 50, line 5	FIGS. 3A, 8 Col. 4, line 65 to col. 5, line 3 Col. 14, lines 1-32 Col. 20, lines 28-52
17 The device of claim 16, wherein the conduit is expanded using an inflatable balloon.	FIGS. 11A-11C, 14A-14C Page 52, lines 10 to 23	FIGS. 11A-11C, 14A-14C Col. 23, lines 53-67 Col. 24, lines 30-57
18 The device of claim 16, wherein the chamber is the left ventricle.	FIG. 10 Page 49, lines 6 and 7 Page 52, lines 10 to 23	FIG. 10 Col. 20, lines 28-52
19 The device of claim 16, wherein the attachment mechanism is selected from the group consisting of hooks, barbs, flanges, collars, suture holes, and expandable legs.	FIG. 3A Page 30, line 1 to page 31, line 6	FIG. 3A Col. 14, lines 1-32
20 The device of claim 16, wherein the attachment mechanism is adapted to anchor the conduit in the heart wall.	FIG. 3A, 8 Page 30, line 1 to page 31, line 6 Page 48, line 25 to page 50, line 5	FIG. 3A, 8 Col. 14, lines 1-32
21 The device of claim 16, wherein the attachment mechanism is adapted to anchor the conduit in the coronary artery.	FIGS. 1A-3C, 7, 8 Page 25, line 18 to page 27, line 8 Page 29, lines 15 to 28	FIGS. 1A-3C, 7, 8 Col. 13, lines 7-67 Col. 14, lines 1-32
22 A bypass conduit for use in a wall of a heart, comprising: a hollow conduit having a plurality of circular rings, an interior, and an exterior; and adapted to be positioned in the heart wall between the coronary artery and a chamber in heart, wherein the conduit has an attachment mechanism on at least one end adapted to anchor the conduit in place.	FIGS. 3A-3C Page 30, line 1 to page 31, line 6 Page 48, line 25 to page 50, line 5	FIGS. 3A-3C Col. 4, line 65 to col. 5, line 3 Col. 14, lines 1-32 Col. 20, lines 28-52